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No. 87-2125

IN THE

Supreme Court of the United States

October Term, 1987

WILLIAM C. MILES, JR., III,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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RULE 28.1 STATEMENT

General Motor's non-wholly owned subsidiaries and affiliates are:

Aralmex, S.A. de C.V. (Mexico)
Automotriz Gencor S.A. (Ecuador)
Autos y Maquinas del Ecuador S.A. (AYMESA) (Ecuador)
Companis Nacional de Direcciones Automotrices, S.A. de C.V. (Mexico)
Compresores Delfa, C.A. (Venezuala)
Convesco Vehicle Sales GmbH (West Germany)
Daewoo Motor Co., Ltd. (Korea)
DHB—Componentes Automotives S.A. (Brazil)
Fabrica Colombians de Automotores S.A. ("Colomotores") (Columbia)
General Motors de Colombia S.A. (Columbia)
General Motors Egypt, S.A.E. (Egypt)
General Motors Iran Limited (Iran)
General Motors Kenya Limited (Kenya)
GM Allison Japan Limited (Japan)
GM Fanuc Robotics Corp. (USA)
Industries Mecaniques Meghrebiers, S.A. (Tunisia)
Industrija Delova Automobils, Kikinda (Yugoslavia)
Isuzu Motors Limited (Japan)
Isuzu Motors Overseas Distribution Corp. (Japan)
Kabelwerke Reinshagen GmbH (West Germany)
Kabelwerke Reinshagen Werk Berlin GmbH (West Germany)
Kabelwerke Reinshagen Werk Neumarkt GmbH (West Germany)
Moto Diesel Mexicana, S.A. de C.V. (Mexico)
Motor Enterprises, Inc. (USA)
New United Motor Manufacturing, Inc. (USA)
Omnibus BB Transportes, S.A. (Ecuador)
Promotora de Partes Electronicos Automotrices (Mexico)
P.T. Mesin Isuzu Indonesia (Indonesia)
Senalizacion y Accessorios del Automobil Yorka, S.A. (Spain)
Suzuki Motor Co., Ltd. (Japan)
Unicables, S.A. (Spain)

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner was hired by respondent in March, 1973 at the respondent's Defiance, Ohio Foundry. He was placed in a training program and after six months he was promoted to supervision. In February, 1974, he was laid off due to a reduction in force and recalled in July, 1974. In January, 1975, he was returned to hourly due to a reduction of the salaried workforce. He was again restored to his position as a production supervisor on September 15, 1975 (Tr. 16-21, 142, 143).

Petitioner was put on probation for poor job performance in April, 1976 (Tr. 55, Def. Ex. D). Of the forty-nine areas rated on the three annual performance appraisals he received, all except eight were below average (Def. Ex. B, C and O). He was consistently advised of his shortcomings as a supervisor by those evaluations and through a series of performance improvement plans implemented by his supervisors (Def. Ex. G, H, I).

In August, 1976, petitioner asked to go back to hourly but changed his mind the next day (Tr. 121, Def. Ex. F). In December, 1976, he was suspended when his two supervisors found the same problems in his area that they warned him about the day before (Def. Ex. J, K, L). After his third consecutive poor annual performance evaluation (Def. Ex. O), petitioner's two supervisors, in March, 1977, recommended that he be terminated as a supervisor. As a result, petitioner was returned to the hourly payroll in June, 1977.

This employment discrimination action was filed on March 21, 1978 in the United States District Court for the Northern District of Ohio, Western Division in Toledo, Ohio. The complaint alleged that respondent transferred petitioner from his supervisory position to its hourly ranks in violation of Title VII of the Civil Rights Act of 1964. Specifically, the complaint alleged race discrimination by respondent on June 16, 1977, the date of demotion.

The case was assigned to Judge Don J. Young (now on senior status) and was tried in one day on September 24, 1980. Over four years later, on January 18, 1985, the court filed its opinion and order finding the respondent liable and ordering the parties to attempt to agree on back wages and attorney fees. The court found that

petitioner was entitled to reinstatement to his former supervisory opinion. Subsequently, on September 13, 1985, the court entered final judgment for the petitioner in the amount of $108,804.69 together with reinstatement to his former position of foreman, a position which petitioner had not held for eight years.

Respondent raised two issues on appeal to the United States Court of Appeals for the Sixth Circuit. First, whether the District Court's finding that the respondent discriminated against the petitioner was totally unsupported by the record. Second, whether the District Court's order reinstating petitioner to his former position almost eight years after his demotion was an abuse of power.

On March 31, 1988, the Court of Appeals reversed the judgment of the District Court. The Court of Appeals held that there were a number of important instances where the District Court's findings were directly contradicted by the record, unsupported by the record, or otherwise clearly erroneous (e.g. the District Court's finding that petitioner was replaced by a white man, when in fact the record shows he was replaced by a black man). Appendix to Petition for a Writ of Certiorari ("App.") 2-3. Further, the Court of Appeals held that in the absence of these erroneous findings, petitioner had not sustained his burden of showing that respondent's reasons for demotion were pretextual and that he suffered from disparate treatment on account of his race in violation of Title VII. App. 2.

REASONS FOR DENYING THE WRIT

I. The United States Court of Appeals for the Sixth Circuit Correctly Applied the "Clearly Erroneous" Standard for Review on This Appeal When It Overturned the District Court's Finding That Respondent Discriminated Against Petitioner.

The proper standard for review on this appeal is the "clearly erroneous" standard set forth in Rule 52(a), Federal Rules of Civil Procedure. The Court of Appeals for the Sixth Circuit correctly acknowledged the standard in its treatment of this appeal.

This Court has held that "a finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948).

A reviewing court may overturn a district court's decision upon a finding that the decision was clearly erroneous. This Court reaffirmed the propriety of an appellate court overturning a district court decision on this basis in *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985). In *Anderson*, this Court held further that a district court could not insulate its decision from a review by basing it in credibility determinations. This Court wrote:

> "This is not to suggest that the trial judge may insulate his findings from review by denominating them credibility determinations, for factors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or objective evidence may contradict the witness' story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable fact finder would not credit it. Where

such factors are present, the Court of Appeals may find clear error even in a finding purportedly based on a credibility determination." 470 U.S. at 575.

In the case at bar, the Court of Appeals properly applied Rule 52(a) in overturning the District Court's finding of discrimination. The Court of Appeals held that it was "left with the definite and firm conviction that the court erred in finding that racial discrimination was responsible for Miles's demotion." App. 10. The Court of Appeals reasoned that in the absence of the factual findings which the Court of Appeals found to be clearly erroneous, there was "insufficient evidence to sustain plaintiff's burden of showing that his demotion was not based on performance but rather was a pretext for racial discrimination." App. 10.

More specifically, both the District Court and the Court of Appeals found credible evidence which showed that petitioner's performance on the job was consistently marginal and, in many cases, below that of comparable supervisors. App. 3. Further, the Court of Appeals cited six findings of fact relied upon by the District Court which had no support in the record and, thus, were clearly erroneous. App. 3-4. Indeed the only piece of evidence which the court might have credited, that petitioner's name had been left off a recognition list published when the plant had good production, would certainly not sustain petitioner's burden of showing that the respondent's reasons for the demotion were pretextual. App. 9. Instead the Court of Appeals correctly found that petitioner's demotion was based on his working record and that he was in no way treated differently because of his race.

Petitioner's contention that the appellate court improperly assumed the function of the trial court is unfounded. The Court of Appeals simply examined the

record for facts which backed up the District Court's findings and found none. Moreover, the Court of Appeals was not evaluating credibility determinations, but rather was acting within the power granted by the Federal Rules of Civil Procedure 52(a) in finding that the District Court was clearly erroneous. Not only was the Court of Appeals within its powers, the court was doing its duty as an appellate court.

Equally unfounded is petitioner's concern that something must be amiss in the Sixth Circuit given that the case at bar and another racial discrimination case were overturned in a two-week period. There is no trend in the Sixth Circuit. For the Court's information, two other Title VII discrimination cases, *Spears v. Board of Education of Pike County, Kentucky,* 843 F.2d 882 (6th Cir. 1988) and *Few v. Yellow Freight Systems, Inc.,* 845 F.2d 123 (6th Cir. 1988) were decided by the Sixth Circuit within two months of the case at bar. In both cases, the Court of Appeals upheld a district court's findings of discrimination as not clearly erroneous. Therefore, petitioner's concern over some kind of dangerous, unjustified pro-defendant trend within the Sixth Circuit is unsupported.

If petitioner had problems with the makeup of the Court of Appeals, a motion for rehearing en banc would have been the appropriate remedy, not seeking writ of certiorari from this Court.

Petitioner's reliance on *Batts v. NLT Corp.,* 844 F.2d 331 (6th Cir. 1988) is irrelevant. *Batts* is not before the Court presently nor, as petitioner's counsel admits, is an appeal pending. Any attempts by the petitioner to argue the merits of *Batts* as a reason to overturn the decision below should not be credited by this Court.

II. Rule 52(a) of the Federal Rules of Civil Procedure and This Court's Interpretation of That Rule in *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948) Has Been Reaffirmed by This Court in *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985) and Does Not Need to Be Re-examined At This Time.

Petitioner's second argument is that the Sixth Circuit used the language in *Gypsum* as "a license to weigh evidence" as a trial court would. The petitioner contends that this Court should reinterpret the language of Rule 52(a) to prevent such alleged "weighing."

As explained above, however, the Sixth Circuit has been faithful to this Court's interpretation of the rule as stated in *Gypsum* and *Anderson*. The Court of Appeals was not acting as a trial court in weighing evidence but instead rested its determination on a "definite and firm conviction that a mistake had been committed." App. 10. There was no departure in this case from Rule 52(a).

Since the Supreme Court has examined Rule 52(a) as recently as 1985 in *Anderson*, there is no need at this time to clarify its meaning to any larger extent. *Anderson* makes it clear to appellate courts that Rule 52(a) should be interpreted strictly. Since the rule's interpretation is firmly established and was properly applied in the case at bar, there is no need for this Court to concern itself with this case.

CONCLUSION

In a case such as this, this Court should only grant certiorari if the appellate court abused its power by acting outside Rule 52(a) or if Rule 52(a) needs to be re-examined or re-interpreted. Neither circumstance exists here.

First, the Court of Appeals was entirely within its power to reverse the trial court's decision based on its "definite and firm conviction that a mistake had been committed." Plainly there was no evidence in the record to show that petitioner's demotion was pretextual.

Second, this Court has clarified Rule 52(a) as recently as 1985 in *Anderson v. City of Bessemer City.* The Sixth Circuit understands the clearly erroneous standard and, in deciding appeals under Rule 52(a), the Sixth Circuit has both affirmed and reversed decisions. In this case, if certiorari were granted, this Court would be doing nothing more than viewing the evidence two steps removed.

For all of the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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